IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

OP.No. 3556 of 2001(W)

PETITIONER:

P.ANILKUMAR, S/O.PUSHPANGADAN,
CHAKKARAPARAMBU, THAMMANAM,
COCHIN.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS:
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1. KERALA SHIPPING & INLAND,
NAVIGATION CORPORATION LTD.,
RAVIPURAM , ERNAKULAM REP.BY
ITS MANAGING DIRECTOR.

2. R.RAVEENDRANATHAN, ACCOUNTANT,
(EDP), KERALA SHIPPING & INLAND
NAVIGATION CORPORATION LTD.,
COCHIN 682 016.

3. N.BALACHANDRAN PILLAI,
SENIOR ASSISTANT,
KERALA SHIPPING & INLAND NAVIGATION,
CORPORATION LTD., COCHIN 16.

BY ADV. SMT.K.SUNITHA VINOD
SMT.I.SHEELA DEVI
SMT.N.SUDHA DEVI
SMT.REJI RAMACHANDRAN
SRI.P.K.VIJAYAMOHANAN
SRI.P.C.IYPE, SC.,KS & INC LTD.
SRI.VAKKOM N.VIJAYAN,SC,KS & INC LTD. - R1
BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.356/2001

ORDER ON CMP. NOS.32039/01, 5856/01 IN OP.3556/2001

DISMISSED

06.08.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.A.8/339/95 DT. 26.6.95 ISSUED BY ISST RESPONDENT.

EXT.P1(a):- COPY OF THE ORDER NO.GO(RT).B/2000/CSIN DT.30.5.2000 ISSUED BY THE DEPARTMENT OF COASTAL SHIPPING AND INLAND NAVIGATION.

EXT.P1(b):- COPY OF THE GOVERNMENT ORDER NO.GO(RT) 5/01/CSIND DT. 23.2.01.

EXT.P2:- COPY OF THE ORDER NO.8/579/2000, DT. 26.8.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE REPRESENTATION DT. 28.8.2000 SUBMITTED BY THE PETTIIONER BEFORE THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE REPRESENTATION DT. 15.9.2000 SUBMITTED BEFORE THE CHAIRMAN KERALA SHIPPING & INLAND NAVIGATION CORPORATION, LTD., KOCHI.

EXT.P5:- COPY OF THE JUDGMENT IN OP. 29265/2000 DT. 18.10.2000 OF THIS HONOURABLE COURT.

EXT.P6:- COPY OF THE ORDER NO.A-9/193/01 DT. 19.1.01 ISSUED BY THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE ORDER ISSUED BY THE 1SXT RESPONDENT REASSIGNING THE DUTIES OF THE EMPLOYEES.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE NO.AAO-3/91 DT. 25.4.91 OF THE 1ST RESPONDENT ISSUED TO PETITIONER , 2ND RESPONDENT AND OTHERS.

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OP. NO.3556/2001

EXT.R1(b):- COPY OF THE ORDER NO.A.8/437/97 DT. 31.7.97 OF THE 1ST RESPONDENT, REFERRED TO IN THE COUNTER AFFIDAVIT.

EXT.R1(c):- COPY OF THE EXTRACT FROM THE MINUTES OF PROCEEDINGS OF THE 140TH MEETING OF THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT HELD ON 2.5.2000.

EXR.1(d):- COPY OF THE LETTER NO.14636/A1/2000/CSIN DT. 23.11.2000 OF THE GOVERNMENT ADDRESSED TO THE 1ST RESPONDENT.

EXT.R1(e):- COPY OF THE PROCEEDINGS NO.A.8/339/95 DT. 26.6.95 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.

EXT.E1(f):- COPY OF THE ORDER NO.G.O.(RT) 8.2000/CSIN DT. 30.5.2000 OF THE GOVERNMENT , REFERRED TO IN THE COUNTER AFFIDAVIT.

EXT.R1(g):- COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF PROCEEDINGS OF THE 143RD MEETING OF THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT HELD ON 29.12.2000.

EXT.R1(h):- COPY OF THE CIRCULAR NO.13410/DPE-2/93/PLG. DT.31.8.93 OF THE GOVERNMENT OF KERALA, REFERRED TO IN THE COUNTER AFFIDAVIT.

EXT.R1(I):- COPY OF THE ORDER GO(RT) NO.5/01/CSIND DT. 23.2.01 OF THE GOVERNMENT ISSUED TO THE CHAIRMAN & MANAGING DIRECTOR OF THE KERALA SHIPPING & INLAND NAVIGATION CORPORATION LIMITED.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.3556 of 2001-W

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Dated this the 6th day of August, 2007.

JUDGMENT

This matter relates to Kerala Shipping and Inland Navigation Corporation Ltd., hereinafter referred to as the "KINCO".

2. KINCO is a Government company. It appears that the staff pattern of KINCO has been done with the concurrence or orders of the State Government.

3. Petitioner and respondents 2 and 3 were selected for appointment as Accounts Clerks in KINCO, the selection and advice being made by the Public Service Commission. While the petitioner joined service on 19-6-1989, the second respondent joined on 24-6-1989 and the third respondent

joined on 24-7-1989. On the basis of the submissions, it appears that the petitioner was working on ledger accounts and the second respondent was working on the pay rolls in the accounts unit. With the passage of time, KINCO desired to have a System Analyst to supervise the implementation of computerization in the Company and accordingly, the Government concurs for creating a post. The Government did not agree with the qualifications suggested by KINCO for the post of System Analyst. While the Government took the view that one should have B.Tech degree or M.C.A. or M.Sc.(Computer Science) to become a system analyst, KINCO essentially dropped that idea and proceeded to have a Section Officer (EDP). That recommendation of KINCO found favour with the Government and Ext.P1(a) Government Order was issued. Thereafter, a post of Section Officer (Personnel & Administration) was created with the concurrence of the Government as per Ext.P1(b) Government Order dated 23-2-2001.

4. Before the aforesaid exercise was undertaken, appointments as Internal Audit Assistant and Senior Assistants also came up. The petitioner was appointed as an Internal Audit Assistant, while respondents 2 and 3 were appointed as Senior Assistants.

5. The challenge in this writ petition is primarily that though the petitioner had entered service before respondents 2 and 3 and though it was his section in which a computer was initially made available and though the petitioner had sufficient expertise, he had been turned out of the zone of consideration for further promotions by manipulating the files in such a manner the Government sanction was obtained to suit the qualifications and experience which were possessed by respondents 2 and 3 and that the Government were not even apprised of the existing staff pattern and the employees who are already

available for being considered for further movement to the higher posts. Accordingly, it is argued that the petitioner has been discriminated against, while the qualifications are prescribed in Exts.P1(a) and P1(b) and the promotions were made to the category of Accountant (EDP) and Superintendent, by ignoring the legitimate claims of the petitioner.

6. Going by Exts.P1(a) and P1(b), it appears to suggest that the Government were not properly apprised of the entire fact situation relating to the existing employees and the question whether there was a hostile exclusion of the petitioner from the purview of choice by grafting the recruitment rules for the post in question in such a manner it would suit the qualifications of respondents 2 and 3 who were available in the administration wing from which the files leading to the Government Orders were generated.

7. With the course of this case, Government were also made a party to this writ petition.

8. Without entering on any adjudication as to the claims, it requires to be noticed that there is no staff pattern prescribed by taking KINCO into consideration as a single unit. While need base creation of posts is made, it has to be ensured that such creation of posts does not tilt the scales in favour of some of the existing employees and depriving others of their legitimate entitlements. This has to be ensured to prevent unjust treatment between the persons who have entered service in the same category. This is more so in the case in hand because, the petitioner admittedly entered the service before respondents 2 and 3.

9. Having regard to the peculiar facts and circumstances, I deem it necessary that the situation in

hand gains attention of the Government.

For the aforesaid reasons, this writ petition is disposed of directing that the Government will call for the entire riles in relation to the issue in hand and consider the matter and take a decision after affording an opportunity of hearing to the petitioner and respondents 2 and 3, after calling for an appropriate report from KINCO. Let a final decision as afore-directed be taken within an outer limit of four months from the date of receipt of a copy of this judgment. It is also clarified that in the peculiar facts and circumstances, the Government will be entitled to decide on the nature of the entitlement of the petitioner and respondents 2 and 3 to hold any higher post in KINCO and also whether the qualifications already prescribed as per Exts.P1(a) and P1 (b) require to be modified. The KINCO shall review all promotions made on the basis of any decision if such a review has become necessary on the basis of the decision

that the Government may issue as directed above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.3556 of 2001-W

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JUDGMENT

Dated: 6th August, 2007.